

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 9456
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a 40-year-old woman with an eighth grade education. She has a history of chronic depression, but was able to maintain employment at various nurses aide jobs until February, 1989, when she began losing weight and "could not function anymore".

The petitioner sees a physician who prescribes medication for her anxiety, but she does not get regular counseling or therapy. The medical record includes consultative psychological assessments from October, 1988, at which time the petitioner's problems were felt to be only moderate (as noted above, the petitioner was working at that time and continued to work for several more months). Following the instant application for Medicaid, however, the petitioner underwent another consultative psychological evaluation in August, 1989. The report of this evaluation includes the

following "conclusions":

The above data, then, indicate that this woman possesses approximately Low Average intellectual abilities. Currently, her functioning is compromised by moderate to severe anxiety, as well as a moderate to severe level of depression. [Petitioner] exhibited very high levels of manifest anxiety during the assessment, and she also reported neurovegetative symptoms of depression. In addition to these difficulties, this woman presented a history of early emotional abuse, as well as dependent relationships in adulthood. She has had few friends and she has always functioned marginally. Finally, [petitioner] mentioned an occasional tendency to abuse alcohol.

From a diagnostic point of view, the current data suggest the following configuration:

Axis I	300.40	Dysthymia, Primary Type, Early Onset.
	300.00	Anxiety Disorder, NOS.
	305.00	Alcohol Abuse.
Axis II	301.60	Dependent Personality Disorder with Schizoid Traits.
Axis III		Not Assessed.
Axis IV	4	Level of Psychosocial Stressor - Severe.
Axis V		Current GAF: 56. Highest GAF Past Year: 56.

Given [petitioner's] history of difficulty since 1978, I would say that the prognosis for improved functioning is rather bleak, at best. She has not benefited from treatment, as she has virtually no insight into her condition. It would appear as though pharmacological approaches would be the best way of attacking her difficulties. Perhaps her functioning will improve now that she has started an antidepressant (she said that Dr. [S.] had just prescribed Desaryl for her). While I am sure that Dr. [S.] is well-equipped to prescribe medications, a psychiatric consultation for more aggressive psychopharmacological intervention might be warranted.

In a follow-up report obtained at the request of the hearing officer, the consulting psychologist completed a department "mental residual functional capacity assessment" form. It noted mostly moderate problems with the petitioner's abilities regarding "sustained concentration and persistence", but that the petitioner was "markedly limited" in certain areas of "social interaction" and in her ability "to complete a normal work-day and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods."

The department concedes that the petitioner cannot perform her past work as a nurses aide. However, based on the above-cited reports by the consulting psychologist, which are uncontroverted by any contemporaneous examining source, it must also be found that the petitioner is unable to perform any job on a competitive and sustained basis. The passage of time--it has been a full year since the petitioner last worked--and the absence of any evidence of an improvement in the petitioner's condition effectively resolve any doubts as to the duration of the petitioner's disability. Hopefully, however, with access to the type of medical intervention suggested by the consulting psychologist (see above) the petitioner will soon be able to resume working.

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Although there is insufficient evidence that the petitioner meets a "listed impairment" (see, e.g., 20 C.F.R. § 404, Subpart P, Appendix I, Section 12.08), uncontroverted medical evidence establishes that for the past year the petitioner was too fragile emotionally to perform any employment on a regular and sustained basis. While it is hoped (and may be reasonably expected) that her condition will improve with appropriate treatment, at this time she meets the above definition of disability. The department's decision is reversed.

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